

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CRAA No. 30/2012

State of J&K.

.... Appellant(s)

Through:- Mr. Raman Sharma, AAG with
Ms. Saliqa Sheikh, Advocate.

V/s

Farooq Ahmed

.....Respondent(s)

Through:- Mr. Sachin Sharma, Advocate.

CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

ORDER(ORAL)

07.08.2025

1. The State of Jammu and Kashmir (now the Union Territory of Jammu & Kashmir) is in appeal against the judgment dated 19.01.2012 passed by the Court of learned Sessions Judge (Special Judge), Udhampur [hereinafter referred to as the, "**trial Court**"] in File No. 14/Special Challan titled, "**State of J&K Vs. Farooq Ahmed**", whereby the trial Court has acquitted the respondent of the charge of Sections 8/20 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (*for short the, "NDPS Act"*).

2. Briefly put the prosecution case, as was put up before the trial Court is that on 01.02.2007 at about 4:30 P.M, an information was received in the Police Station, Udhampur that one loaded truck bearing Registration No. PB08-AU/8235 driven by its driver (respondent herein) was on its way from Srinagar to Jammu. The police was also informed that the respondent, who was driving the truck was accompanied by one-Ghulam Mohd., who was also travelling in the same truck. It was also

the information that the respondent herein and Ghulam Mohd. had concealed charas under the driver's seat and tool-box in the said vehicle. On receipt of this information, an FIR No. 28/2007 under Sections 8/20 of the NDPS Act was registered and the investigation set in motion. The SHO, Police Station, Udhampur informed the concerned officers through telephone to reach at Jakhani National Highway alongwith kit bag and other police personnels, the photographer and mobile team of FSL of Police Station. The SHO himself also proceeded to Jakhani National Highway and laid nakka there. The truck aforementioned, which was coming from Srinagar to Jammu was intercepted and stopped at the nakka point. On inquiry, the driver disclosed his name as Farooq Ahmed and other person as Ghulam Mohammed. The Tehsildar 1st Class Magistrate, Udhampur, namely, Gandharab Singh, Senior Superintendent of Police, Udhampur and ASP, Udhampur also came on spot. On being given an option, both respondent herein and Ghulam Mohd. opted to be searched in the presence of and through the Magistrate present on spot. The Magistrate alongwith the police personnel searched the truck and recovered a bag containing 11 packets of charas hidden on the back side of the driver's seat. The seized contraband was weighed. The sample weighing 200 grams was taken out from each ball of charas for examination of FSL. The rest of the contraband weighing about 32 Kg.600 grams was also separately packed and marked as Mark-B. The Magistrate vide his Letter No. 1393-94/M dated 01.02.2007 gave an authority letter for taking the sample to the Director, FSL. During investigation, the seized contraband and the truck involved in the commission of crime were seized and site plans prepared.

The Investigating Officer recorded the statements of the witnesses under Section 161 Cr.PC.

3. As per the prosecution story, the respondent alongwith his co-accused were taken into custody and brought to the police alongwith packets of charas and seized truck. The seized charas was entered in Register under Serial No. 19 and was kept in Malkhana. The sealed sample, which was prepared on spot was sent to the FSL for examination and the same was detected as charas. On this, the investigation was wound up by the Investigating Officer and a challan under Sections 8/20 of the NDPS Act was presented before the trial Court. Vide order dated 29.05.2007, the trial Court framed charge under Sections 8/20 of the NDPS Act against the respondent and discharged the co-accused, namely, Ghulam Mohd. The respondent pleaded not guilty to the charge and claimed to be tried.

4. With a view to prove its case, the prosecution examined PW-1 (Aman Sharma), PW-2 (Suneel Gudda), PW-3 (Kartar Chand), PW-4 [Mohd. Rafiq (Constable)], PW-6 (Lal Chand), PW-7 (Bishamber Singh), PW-8 (Swami Raj), PW-9 (Magher Singh), PW-15 (Mohd. Hanief), PW-16 [(Gandharb Singh (Executive Magistrate 1st Class, Udhampur)], PW-Rohit Koul [(an official of FSL)] and PW-18, namely, Jagdev Singh (Inspector/Investigating Officer). On conclusion of prosecution evidence, the incriminating material appearing in the prosecution evidence was put to the respondent and his statements under Section 342 Cr.PC were recorded. The respondent denied that any recovery or seizure of contraband was effected from him. He also denied the other circumstances appearing against him in the prosecution

evidence. The respondent entered his defence and examined DW-Mohd. Afzal Bhat as his witness.

5. The trial Court after hearing both the sides and analyzing the evidence, that had come on record during the trial, came to the conclusion that the prosecution had failed to prove the charge against the respondent beyond any reasonable doubt. The trial Court vide judgment impugned before us, acquitted the respondent, primarily, on following grounds:-

- (i) ***That there were serious contradictions with regard to recovery and seizure of the contraband, as also the weight of the contraband and the sample taken out therefrom;***
- (ii) ***That the prosecution had failed to prove the safe custody of the contraband seized and the sample taken from 01.02.2007 to 12.02.2007.***

6. The impugned judgment is assailed by the appellant, primarily, on the ground that the contradictions noted by the trial Court are minor in nature and do not go to the root of the case. It is submitted that not only the recovery of the contraband had been proved with the help of independent witnesses, but it also proved beyond any reasonable doubt that the sample, which was taken out from the seized contraband was ultimately proved to be charas, therefore, attracting the commission of offences under Sections 8/20 of the NDPS Act. Regarding safe custody of the sample, it is argued by the learned counsel for the appellant that in absence of any allegation that the seals affixed in the sample were tempered, the safe custody of the contraband cannot be doubted.

7. ***Per contra***, learned counsel for the respondent submitted that the trial Court has examined the prosecution evidence minutely and after evaluation, has come to the conclusion that the evidence on record is not sufficient to connect the respondent with the commission of offences the

respondent was charged. He lays great stress on the issue of safe custody of the sample. He submits that in absence of clinching evidence, demonstrating the safe custody of the sample from 01.02.2007 till 12.02.2007, it is difficult to say that the sample, which was subjected to examination by the FSL was the same, that was taken out from the seized contraband on 01.02.2007.

8. Having heard learned counsel for the parties and perused the judgment impugned, we are of the considered opinion that the trial Court has very minutely gone into the evidence on record and has arrived at a just conclusion that the evidence led by the prosecution is not sufficient to support charge against the respondent. Without going into the manner, in which the contraband was recovered from the truck driven by the respondent and seized in presence of the Magistrate, suffice to say that in the instant case, the prosecution has miserably failed to prove that the sample taken out from the seized contraband remained all along in the safe custody from the date of its seizure till it landed in the FSL. PW-8, namely, Swami Raj was, at the relevant point of time, crime moharar and incharge of Malkhana. As per his deposition, the seized material was brought by the Investigating Officer to the Malkhana and was entered in Malkhana Register No. 18 as per verbal orders of the SHO. PW-8 has also placed on record a Certificate EXTP-8, which is a copy of the relevant extract of the Malkhana Register. A perusal of the Certificate EXTP-8 would clearly indicate that the date on which the seized material was received and deposited in the Malkhana, is not indicated nor the date, on which, it was taken out from Malkhana for its onward transmission to

FSL is indicated. The date 09.02.2007, which is inserted in the Certificate EXTP-8 has been denied by the Incharge, Malkhana (PW-Swami Raj).

9. If we were to believe the statements of PW-8, namely, Swami Raj (the incharge of the Malkhana) that the sample was taken out from Malkhana on 12.02.2007, then it remains to be explained by the prosecution as to how the Senior Superintendent of Police forwarded the same vide its Communication dated 09.02.2007. However, if we were to believe the Communication of Senior Superintendent of Police, which is written in the discharge of his official duties that the sample was forwarded to the FSL on 09.02.2007, then it again remains to be explained by the prosecution as to where the sample was kept between 09.02.2007 to 12.02.2007, when it is said to have been received by the FSL through Head Constable, namely, Mohd. Hanief.

10. From the above, it is abundantly clear that the sample, which was taken out of the contraband seized on spot was not handled properly by the Investigating Officer. There is nothing on record to show about the safe custody of the sample between 01.02.2007 till 09.02.2007/12.02.2007 and in absence of such safe custody having been demonstrated through reliable evidence, it is difficult for us to conclude that the sample, which tested 'charas' in the FSL was the sample, which was actually picked up from the contraband seized from the possession of the respondent. That apart, we are in agreement with the trial Court that there are other contradictions in the prosecution evidence with regard to the manner of effecting the recovery of contraband, the weight of the contraband seized and the manner, in which a single sample was prepared from 11 packets

and 175 balls. There is nothing in the evidence to show that one sample each was picked up from all the 175 balls of the suspected contrabands.

11. In the face of such evidence brought on record by the prosecution, the trial Court had no option, but to give the benefit of doubt to the respondent and let him free by dismissing the challan. We also see no good reason or justification to differ with the view taken by the trial Court.

12. Needless to reiterate that while hearing an appeal against the judgment of acquittal, the scope of interference is well circumscribed. Even if, on evaluation of evidence on record, the Appellate Court is of the opinion that the view other than one taken by the trial Court is also a permissible view, yet the Appellate Court would prefer to take a view that favours the accused. It is not the case of the appellant that the judgment passed by the trial Court suffers from any perversity warranting interference in acquittal appeal.

13. For the foregoing reasons, we find no merit in this appeal. The same is, accordingly, ***dismissed***.

(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

JAMMU
07.08.2025
Ram Krishan